

The Hon. Robert S. Lasnik

08-CV-01286-INFO

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROBERT AND BEVERLY HARDIE, on
behalf of themselves and others similarly
situated,

Plaintiffs,

v.

COUNTRYWIDE HOME LOANS
SERVICING, L.P.,

Defendant.

NO. 08-cv-1286 RSL

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

The Court, based on the facts of record, the submissions and argument of counsel, and being otherwise fully advised in the premises, hereby makes the following:

FINDINGS OF FACT

1. This case was filed on July 21, 2008 in King County, Washington Superior Court by the Plaintiffs, Robert and Beverly Hardie ("Plaintiffs" or "the Hardies"), as a putative class action to recover against Defendant Countrywide Home Loans Servicing, LP ("Defendant" or "Countrywide") for breach of contract, unjust enrichment, and violations of Washington's Consumer Protection Act, RCW Chapter 19.86.

1 2. Countrywide removed the matter to this Court on August 27, 2008.

2 3. Plaintiffs had a loan secured by a Deed of Trust on their residence that was
3 serviced by Countrywide. Plaintiffs allege that when they paid off their loan, Countrywide
4 charged them a fee to record a Substitution of Trustee form with the auditor of the county where
5 their residence was located, and that this fee was not permitted to be charged by their Deed of
6 Trust or any other loan document. Plaintiffs further alleged that this fee was not secured by the
7 Deed of Trust, and that Countrywide required them to pay the fee before it would agree to
8 reconvey the Deed of Trust, causing them to suffer money damages.
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10 4. On September 18, 2008, Plaintiffs moved for leave to file an Amended Complaint
11 to more specifically describe their claims. Countrywide opposed the motion. The motion was
12 granted on October 24, 2008, and Plaintiffs filed their Amended Complaint on October 27, 2008.
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14 5. On September 26, 2008, Plaintiffs filed a motion to remand the case to the King
15 County Superior Court. Countrywide opposed the motion, and on December 8, 2008 and January
16 28, 2009, the Court entered separate orders denying the motion.
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18 6. On February 23, 2009, Plaintiffs filed a motion for certification of a class under
19 Fed. R. Civ. P. 23(b)(2) or 23(b)(3). Subsequent to the filing of this motion, the parties began
20 settlement discussions, and the Plaintiffs agreed to continue the hearing on the motion pending the
21 outcome of these discussions.
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23 7. The parties engaged in active litigation of this matter.
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25 8. On December 1, 2009, the parties mediated their claims before Judge Steve Scott
26 (Ret.). The parties did not reach a settlement during the mediation.
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1 9. Following the mediation and with the assistance of Judge Scott, the parties
2 continued active settlement negotiations. These settlement negotiations resulted in a settlement in
3 principle in or about early January 2010. The settlement in principle was expressly conditioned
4 upon the negotiation and execution of a mutually agreeable written settlement agreement and
5 related documents.
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8 10. Over the course of approximately three and one-half months, the parties drafted
9 and negotiated the Settlement Agreement and related documents. During this period, frequent
10 additional negotiations were necessary over specific terms and language of the Settlement
11 Agreement and related documents. The parties executed the original Settlement Agreement in
12 late April, 2009.
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15 11. Plaintiff moved for preliminary approval of the settlement. The Court granted
16 preliminary approval of the Settlement Agreement on May 26, 2010. The Order certified a Class,
17 for settlement purposes, of:
18

19 All persons who, during the period from July 27, 2002 to the date of this
20 Agreement, paid a Recording Fee and/or a Substitution Fee to CHLS in connection
21 with a Loan secured by real property located in the State of Washington.

22 Plaintiffs were appointed as Representatives for the Settlement Class, and Rob Williamson of
23 Williamson & Williams and Guy W. Beckett of Berry & Beckett Law Offices, PLLP were
24 appointed Class Counsel.
25

26 12. Pursuant to the proposed settlement, Countrywide agreed to a Settlement Amount
27 of \$337,500, from which would be paid (1) Claims of Class Members; (2) Settlement
28 Administration expenses; (3) Class Counsel's fees and expenses (up to an aggregate of \$102,500);
29 and (4) the Class Representative's incentive fee. Any portion of the \$337,500 Settlement Amount
30

1 not distributed for any of these categories will be paid to a non-profit organization selected by
2 Countrywide which is reasonably acceptable to Class Counsel and the Plaintiff, and approved by
3 the Court. Pursuant to the proposed Settlement, each Class Member who timely returns a properly
4 completed Claim Form will receive a \$6.00 payment from the Settlement Amount.
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7 13. Pursuant to the Settlement Agreement, the Settlement Administrator mailed notice
8 of the proposed settlement to all 154,358 Class Members, at their updated addresses using the
9 United States Postal Service address update service. 32,620 notices were returned to the
10 Settlement Class Administrator, and of those returns, 394 envelopes had forwarding address
11 information and notice was resent to the new address for those 394 notices. The remaining 32,226
12 returned notices were not remailed. The notices informed Class Members that Class Counsel
13 would be seeking an award of up to \$102,500 for attorney's fees and expenses.
14

15
16 14. As of September 21, 2010, 6,389 valid and timely Claim Forms, representing 6,652
17 distinct loans, had been returned to the Settlement Administrator by Class Members.
18

19 15. Forty-eight (48) Class Members, with sixty (60) loans, opted out of the proposed
20 settlement. Only one Class Member timely filed a document that could potentially be construed
21 as an objection to the proposed settlement. That document did not specifically object to the terms
22 of the settlement, including the requested award of attorney's fees and expenses to Class Counsel.
23 No specific objection to an award of compensation to the Plaintiff as Class Representative has
24 been filed or served by any Class Member.
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27 16. The lodestar value of Class Counsel's time, billed at their regular rates, exceeded
28 \$130,000 as of September 23, 2010.
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1 17. As of September 23, 2010, Class Counsel has advanced costs and expenses in the
2 total amount of \$ 1,475.94. This amount does not include Westlaw legal research charges that
3 were incurred for this case by Berry & Beckett, PLLP and Williamson & Williams. To date, none
4 of these costs and expenses has been reimbursed to Class Counsel.
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6 18. Class Counsel undertook this action without participation by any other firm and
7 were solely responsible for its outcome.
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9 19. The Class Representatives, the Hardies, actively assisted with the prosecution of
10 this lawsuit and completion of the Settlement Agreement.
11

12 20. The Court is satisfied that its knowledge of the proceedings, including discovery,
13 motions to amend, to remand, for certification, for preliminary approval of the proposed
14 settlement, and for final approval of the proposed settlement, and the briefing and argument
15 related thereto, is adequate for purposes of considering the reasonableness of Class Counsel's fee
16 request.
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19 From the foregoing Findings of Fact, the Court hereby makes the following:

20 **CONCLUSIONS OF LAW**
21

22 1. Class Counsel's petition for an award of attorney's fees and costs of \$102,500.00,
23 is reasonable and is approved.
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25 2. This fee award satisfies the lodestar cross-check because it amounts to only about
26 79% of the lodestar amount of fees incurred by Class Counsel in prosecuting this case.
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28 3. An award of \$5,000 to the Class Representatives, Robert Hardie and Beverly
29 Hardie, is fair and reasonable under the circumstances and is approved.
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The Honorable Robert S. Lasnik
United States District Court Judge